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HUMAN RIGHTS COMMITTEE

Fifty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1531st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 October 1996, at 10.30 a.m.

Chairperson: Mr. AGUILAR URBINA

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1531/Add.1.

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GE.96-18621 (E)

The meeting was called to order at 10.55 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fifty-eighth session of the Human Rights Committee.*

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CCPR/C/118)

2. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS

3. The CHAIRMAN drew attention to the draft programme of work which had been distributed in English as a document without symbol entitled "Draft programme of work".

4. The draft programme of work was adopted.

5. The CHAIRMAN invited Ms. Evatt, the Chairman/Rapporteur of the Working Group on Communications, to present her report to the Committee.

6. Ms. EVATT (Chairman/Rapporteur of the Working Group on Communications) said that the Working Group, consisting of Mr. Bán, Mr. El Shafei, Mr. Mavrommatis, Ms. Medina Quiroga and herself, had held seven meetings, and had adopted seven decisions on admissibility, two recommendations on inadmissibility and seven recommendations on findings, which would be distributed to the members of the Committee. The Working Group had also discussed two notes from the Permanent Mission of Jamaica concerning the Committee's consideration of communications submitted by persons on death row in Jamaica. The text of the notes as well as the Working Group's suggestions would be distributed to members of the Committee in the afternoon for consideration in closed session. She pointed out that the Working Group had been assisted by only two members of the Secretariat, namely, Ms. Edelenbos and Ms. Morales, who had provided effective support in difficult circumstances.

7. The CHAIRMAN, speaking in his capacity as Chairman/Rapporteur of the Working Group on article 40, which included Mr. Bhagwati, Lord Colville and Mr. Francis, said that the Group had held seven meetings to draft a list of issues to be taken up when the following reports were considered: fourth periodic report of Germany, third periodic report of Denmark, initial report of Gabon, special report of the United Kingdom relating to Hong Kong and the initial report of Switzerland. He invited the members of the Committee to review the list of issues to be taken up in connection with the consideration of the third periodic report of Denmark (CCPR/C/58/L/DEN/2), which consisted of two parts, each of which was subdivided into paragraphs.

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* For technical reasons the closure of the fifty-seventh session could not be recorded in the last summary record prepared for that session (CCPR/C/SR.1530).

Part I

Paragraphs (a) to (j)

8. Paragraphs (a) to (j) were adopted.

9. Part I of the list of issues was adopted.

Part II

10. Mr. KLEIN requested the inclusion of the following question in Part II: "Medical experimentation on persons: please provide, in view of article 7, clause 2 of the Covenant more detailed information on the admissibility of experimentations on persons unable to give their consent (para. 40 of the report)". The question pertained, in particular, to medical experiments carried out on persons who did not understand the implications of such practices, such as persons suffering from mental illnesses. The matter was one which, with good reason, was of concern to a number of countries.

11. Lord COLVILLE said that he would include that question in Part II of the list of issues to be taken up in connection with the third periodic report of Denmark.

Paragraphs (a) to (e)

12. Paragraphs (a) to (e) were adopted.

Paragraph (f) - Interpretation of the Covenant

13. Lord COLVILLE said his attention had been drawn to the question of the publication of the Covenant in Greenland and the Faroe Islands but did not think it was necessary to modify the questions contained in paragraph (f).

14. Mr. POCAR suggested that it might be preferable, in the first question in paragraph (f), to refer to "local authorities" instead of "Government".

15. Mr. LALLAH was of the view that the question was aimed at determining how the Government at various levels was informed of the Committee's interpretation of the Covenant.

16. Mr. BHAGWATI thought that the expression "appropriate authorities of the Government" should be used.

17. Ms. EVATT concurred with Mr. Bhagwati's suggestion.

18. Mr. BUERGENTHAL proposed that the word "views" should not be used in the first line of the English text in order to avoid confusion with "views" as used in the second line, and that the question should simply be worded as follows: "the interpretation of the Covenant given by the Committee, ... was brought to the attention ...".

19. Mr. BHAGWATI, referring to the first question in paragraph (f), suggested that mention should be made, after the general observations and comments on individual communications, of the Committee's concluding observations, which sometimes also constituted an interpretation of the Covenant.

20. Paragraph (f), as orally revised, was adopted.

Paragraphs (g) and (h)

21. Paragraphs (g) and (h) were adopted.

22. Part II of the list of issues, as orally revised, was adopted.

23. The list of issues to be taken up in connection with the consideration of the third periodic report of Denmark (CCPR/C/58/L/DEN/2), as orally revised, was adopted.

24. The CHAIRMAN invited the members of the Committee to review the list of issues to be taken up in connection with the consideration of the special report of the United Kingdom relating to Hong Kong (CCPR/C/58/L/HKG/2).

25. Mr. KRETZMER noted that the list of issues recommended by the Working Group was long and contained very detailed questions. He wondered whether, when the Committee had requested a special report from the United Kingdom, it had intended to review so many questions or whether it wished to confine itself - as was his understanding - to the crucial question of how the Chinese authorities would fulfil the obligations assumed by the United Kingdom in connection with the submission of periodic reports after July 1997.

26. The CHAIRMAN said that the Committee had requested a brief report on new developments with regard to the enjoyment of human rights in Hong Kong, pursuant to the recommendations contained in the observations made by the Committee and in the statement made by its Chairman on behalf of the Committee on reporting obligations in relation to Hong Kong after the change of sovereignty. The Committee could therefore revert to any question whatever, but it would indeed be preferable if it confined itself to the basic issue of the future implementation of the Bill of Rights Ordinance. The Committee might wish to discuss, in closed session, the position it intended to adopt to the question of monitoring the Covenant's application by China in the territory of Hong Kong.

27. Following an exchange of views in which Ms. EVATT, Mr. MAVROMMATIS, Mr. PRADO VALLEJO, Ms. CHANET and Mr. BHAGWATI took part, the CHAIRMAN said that the consideration of the list of issues to be taken up in connection with the consideration of the special report of the United Kingdom relating to Hong Kong would be discussed later in a closed meeting.

28. The CHAIRMAN invited the members of the Committee to consider the list of issues to be taken up in connection with the consideration of the initial report of Switzerland (CCPR/C/58/L/SWI/2), beginning with Part I.

29. Paragraphs (a), (b) and (c) of Part I were adopted without change.

Paragraph (d)

30. Mr. KLEIN, referring to paragraph (d), pointed out that the Committee could not ask the Swiss Government whether any concrete steps had been taken to adapt the Penal and Military Codes to the requirements of article 2 of the Covenant because paragraph 380 of its report (CCPR/C/81/Add.8) stated that two new articles amending the Penal Code and Military Penal Code, punishing racial discrimination, would enter into force on 1 January 1995. The Committee should instead ask whether those amendments to the Penal and Military Penal Codes had actually come into force and, if so, on what date and whether they had influenced the Federal Government to withdraw its reservation.

31. The proposal was adopted.

32. Paragraph (e) was adopted without changed.

Paragraph (f)

33. Ms. CHANET proposed, with regard to the protection of children, that the Committee should ask what changes had taken place in the status of children born out of wedlock since the State party had indicated that steps would be taken, with a view to the ratification of the Convention on the Rights of the Child, to correct the existing distinction made between children born in wedlock and those born outside. The report dated from 1995, so that the situation might well have changed.

34. The proposal was adopted.

35. Paragraphs (g) and (h) were adopted without change.

Paragraph (i)

36. Mr. PRADO VALLEJO proposed that the Committee should ask how many requests for asylum were refused annually.

37. The proposal was adopted.

38. Mr. KLEIN suggested that, before the Committee dealt with the questions in Part II of the list of issues, a question on freedom of expression should be added, although he was uncertain whether it should appear in Part I or II. He believed the Committee had good reason to ask for a clarification of the restrictions on freedom of expression imposed on foreigners, in view of paragraph 369 of the report (CCPR/C/81/Add.8), which stated that the freedom of expression of foreigners without an establishment permit was "subject to specific restriction".

39. The CHAIRMAN said that the question would besc be included in Part II.

40. It was so decided.

41. Ms. MEDINA QUIROGA, noting that the Committee often referred to differences in the treatment of foreigners and Swiss nationals in the list of

issues, said it might be appropriate to ask a general question that enabled the Swiss authorities to explain in respect of which articles of the Covenant there were differences in treatment.

42. Mr. BUERGENTHAL agreed, and said it would be preferable to change the order of questions, grouping together all those relating to foreigners.

43. The CHAIRMAN suggested placing the general question on differences in the treatment of foreigners and Swiss nationals in Part II after paragraph (b) and inserting paragraph (i) of Part I (asylum seekers) after paragraph (b) of Part II. In that way, the general question would be followed by the question on asylum seekers, and then the questions set out in paragraphs (c) and (d).

44. It was so decided.

45. Mr. BHAGWATI suggested that the Committee should discuss a proposal he had recently heard of, according to which persons wishing to emigrate to Switzerland would be grouped into three broad categories, namely: nationals of countries of the European Union and the European Free Trade Association, nationals of North America, Australia and New Zealand, and nationals from other countries. The Committee could ask the representatives of Switzerland for confirmation of that proposal in a question that could be placed after the general question relating to differences in treatment.

46. The proposal was adopted.

47. Mr. POCAR said that the general question relating to differences in treatment could be used by the Committee to ask the State party about the application of the principle of equality in general, in view of the reservation entered by Switzerland with regard to article 26 of the Covenant. It would be useful to determine all the implications of that reservation.

48. The proposal was adopted.

49. The list of issues to be taken up in connection with the consideration of the initial report of Switzerland (CCPR/C/58/L/SWI/2), as a whole, as orally revised, was adopted.

50. The CHAIRMAN invited the members of the Committee to review the list of issues to be taken up in connection with the consideration of the initial report of Gabon (CCPR/C/58/L/GAB/2), beginning with Part I and proceeding paragraph by paragraph.

Part I

Paragraphs (a) and (b)

51. Paragraphs (a) and (b) were adopted without change.

Paragraph (c)

52. Ms. CHANET proposed that the French side heading of the paragraph should be changed to read "Transition vers la démocratie", which would be the exact equivalent of the English side-heading.

53. The proposal was adopted.

Paragraph (d)

54. Ms. CHANET suggested that the side-heading of the paragraph should be changed because it was unclear.

55. Lord COLVILLE believed it would be advisable to mention the Ministry of Justice in the text of the paragraph and not in its side-heading. The question would thus cover the functions and powers of both the Ministry of Human Rights and the Ministry of Justice.

56. The CHAIRMAN suggested that the paragraph's side-heading should read "Human Rights bodies".

57. The proposals made by Lord Colville and the Chairman were adopted.

Paragraph (e)

58. Mr. ANDO proposed that paragraphs (d) and (e) could be merged to replace the existing paragraph (e).

59. The proposal was adopted.

Paragraph (f)

60. Ms. EVATT proposed that the Committee should also ask what factors impeded the achievement of equality between men and women. That question could be inserted between the first and second sentence.

61. The proposal was adopted.

Paragraphs (g) and (h)

62. Paragraphs (g) and (h) were adopted without change.

63. The CHAIRMAN pointed out the absence of a paragraph (i).

Paragraph (j)

64. Ms. EVATT said that the Gabonese authorities had, in paragraph 30 of the report (CCPR/C/31/Add.4), referred to violations of article 7 of the Covenant. The Committee should therefore ask the Gabonese delegation for a clarification of those violations by amending the second question in paragraph (j) to read "such violations, including those mentioned in paragraph 30 of the report".

65. The amendment was adopted.

66. Paragraphs (k), (l) and (m) were adopted without change.

Paragraph (n)

67. Mr. ANDO was of the opinion that the nature of the provisions referred to should be specified.

68. The CHAIRMAN pointed out that the word in question referred not only to laws adopted by Parliament. The French version could therefore qualify the provisions as "juridiques".

69. Lord COLVILLE said he fully agreed with the Chairman's comment and noted that detention incommunicado was often based on regulations or provisions other than laws. For that reason, it would be well to say "legal provisions" in English.

70. The amendment proposed by Lord Colville was adopted.

Paragraph (o)

71. Paragraph (o) was adopted without change.

72. Part I, as orally revised, was adopted.

Part II

Paragraph (a)

73. Mr. POCAR proposed that the question should be reworded so as to ask the Gabonese authorities to specify in what circumstances a person could be imprisoned in civil cases and what procedure was applicable in such cases.

74. The proposal was adopted.

75. Mr. EL SHAFEI asked why, contrary to previous practice, mention was no longer made of the articles of the Covenant in the side-headings of paragraphs. The only exception was paragraph (a) of Part II, and it would be useful to have an explanation of the new procedure.

76. The CHAIRMAN recalled that the Committee had decided, at its fifty-sixth session, to change the procedure applicable to the list of issues to be taken up in connection with the consideration of reports of States parties. The changes included an indication, in paragraph side-headings, of the area of concern rather than the corresponding articles of the Covenant. The list of issues being considered by the Committee therefore reflected that decision.

77. Ms. CHANET said she was not questioning the validity of that decision, which she fully supported, but considered that Mr. El Shafei was correct in pointing out an inconsistency in the list of issues relating to Gabon. The question in paragraph (a) of Part II was probably pointless, because the situation described in paragraph 36 of the report (CCPR/C/31/Add.4) did not appear to be covered by the implementation of article 11 of the Covenant. In any case, the Committee should try to be consistent and bring the side-heading

of the question into line with other side-headings. Furthermore, since it had been decided that reference would not be made to the articles of the Covenant in the side-headings, the Committee could, and as far as possible should, specify elsewhere which articles of the Covenant were applicable. She proposed that the side-heading of the paragraph should be changed.

78. The proposal was adopted.

Paragraphs (b) to (k)

79. Paragraphs (b) to (k) were adopted without change.

80. Ms. EVATT said that since the initial report of Gabon (CCPR/C/31/Add.4) gave practically no information about the implementation of articles 23 and 24 of the Covenant, a question should be included in the list of issues requesting the Gabonese delegation to provide information on the measures adopted to ensure equality between spouses and the enjoyment of the rights embodied in article 24, as well as on factors impeding the enjoyment of such rights.

81. The proposal was adopted.

82. Part II, as orally revised, was adopted.

83. The list of issues to be taken up in connection with the consideration of the initial report of Gabon (CCPR/C/31/Add.4 and HRI/CORE/1/Add.65), as orally revised, was adopted.

84. The CHAIRMAN invited the members of the Committee to consider the list of issues to be taken up in connection with the consideration of the fourth periodic report of Germany (CCPR/C/84/Add.5 - CCPR/C/58/L/GER/2, documents in English only), starting with Part I and proceeding paragraph by paragraph.

Part I

Paragraphs (a) to (d)

85. Paragraphs (a) to (d) were adopted without change.

Paragraph (e)

86. Mr. LALLAH proposed the deletion of the last point in the first sentence because it might appear to be naïve.

87. The proposal was adopted.

Paragraphs (f) to (j)

88. Paragraphs (f) to (j) were adopted without change.

Paragraph (k)

89. Mr. BUERGENTHAL said he had proposed, at the meeting of the Working Group during which the list of issues was drafted, the addition of a question

dealing with a recent amendment to the German Constitution on asylum seekers and a decision taken by the Federal Constitutional Court on the same subject. That question had not been included in paragraph (k) but should be.

90. Mr. BHAGWATI said that Mr. Buergenthal's question had been omitted inadvertently and it was important that it should be included in the paragraph.

91. The addition proposed by Mr. Buergenthal was adopted.

Paragraph (l)

92. Paragraph (l) was adopted without change.

93. Part I, as orally revised, was adopted.

Part II

Paragraphs (a) to (h)

94. Paragraphs (a) to (h) were adopted without change.

Paragraph (i)

95. Mr. KRETZMER wondered whether the questions in that paragraph were necessary.

96. Mr. BHAGWATI explained that they were connected with the last sentence of paragraph 146 of the report of Germany (CCPR/C/84/Add.5).

97. Mr. KLEIN said there had been two cases in which a political party had been prohibited in the 1950s but since then no political party had been declared unconstitutional.

98. Ms. EVATT said that in her view the questions were of interest in connection with extreme right and neo-Nazi organizations and pointed out that if the questions in paragraph (i) were retained, she would ask the German delegation about the procedures applicable to that type of organization.

99. The CHAIRMAN said it appeared that the Committee was in favour of deleting paragraph (i).

100. It was so decided.

101. Part II, as orally revised, was adopted.

102. The list of issues to be taken up in connection with the consideration of the fourth periodic report of Germany (CCPR/C/84/Add.5 and HRI/CORE/1/Add.75), as orally revised, was adopted.

The first part (public) of the meeting rose at 12.25 p.m.